IN THE

Supreme Court of the United States

October Term, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,
Respondent.

BRIEF FOR THE RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

HARRY T. KLEIN,
T. K. SCHMUCK,
LIONEL P. MARKS,
JERROLD H. RUSKIN,
Counsel for Respondent.

INDEX

Table of Cases.

Statutes.

Treatises.

IN THE

Supreme Court of the United States

October Term 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,

Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,

Respondent.

BRIEF FOR THE RESPONDENT.

Opinions Below.

The opinion of the District Court of San Juan, Puerto Rico (R. 14-19) is not officially reported. The opinions of the Supreme Court of Puerto Rico (R. 26-34 and R. 48-53) are reported in Spanish only (52 P. R. Dec. 658 and 53 P. R. Dec. 475). The opinion of the Circuit Court of Appeals (R. 57-68) is reported in 102 F. (2d) 710.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on March 25, 1939 (R. 68-69). The petition for a writ of certiorari was filed June 22, 1939. Certiorari was granted October 9, 1939.

Statutes Involved.

The statutory provisions involved in the determination of this case are quoted in the Appendix.

Statement of the Case.

The writ of certiorari herein brings up for review a judgment of the Circuit Court of Appeals, First Circuit, vacating and remanding a judgment of the Supreme Court of Puerto Rico which affirmed a judgment of the District Court of San Juan, dismissing respondent's bill to enjoin petitioner from attaching and selling respondent's properties in order to collect certain awards of the Workmen's Relief Commission of Puerto Rico. It was and is respondent's contention that such awards should have been paid out of the state fund and not collected from the respondent as the employer.

Facts.

On November 5, 1936, respondent filed in the District Court of San Juan, Puerto Rico, a bill of injunction (R. 1-7) against the petitioner, the Treasurer of Puerto Rico, alleging as follows:

(1) That, in the month of February, 1926, three laborers employed by respondent died as a result of an accident incident to their work (R. 2).

(2) *That all of the laborers employed by respondent at that time were insured* (R. 1) under the Workmen's Accident Compensation Act then in effect and that *respondent had complied with all of the requirements of said Act necessary to render it an insured employer* (R. 2-3) *and had paid the required premiums* (R. 2-3).

(3) That, nevertheless, the Workmen's Relief Commission on April 24, 1928 handed down orders awarding $2,000.00 compensation to the dependents of each of the deceased laborers and declaring that respondent was not an insured employer although it was a matter of record in the said Commission that respondent was insured (R. 2-3).

(4) That at the direction of the Commission liquidations were prepared and forwarded to the Attorney General of Puerto Rico so that he might proceed to collect from respondent a total sum of $5,954.67 for the dependents of the deceased laborers plus $720.00 administrative expenses, or a total of $6,674.67 (R. 3).

(5) That on June 2, 1928, respondent brought certiorari to review the said orders of the Workmen's Relief Commission, but said writs of certiorari were dismissed by the District Court on the ground that certiorari applied to review the actions of courts only and not of administrative bodies (R. 3). (The judgment of the District Court was affirmed by the Supreme Court of Puerto Rico on January 23, 1930. *The Texas Company (P. R.), Inc.* v. *Workmen's Relief Commission*, 40 P. R. R. 456.)

(6) That *for more than eight years* (*i. e.* from April 24, 1928 to September 14, 1936) no action was taken by the Workmen's Relief Commission, or its successor, the Industrial Commission of Puerto Rico, or by the Attorney General of Puerto Rico, to collect the compensations awarded by the said orders (R. 3-4).

(7) That on September 14, 1936, the Industrial Commission of Puerto Rico (successor to the Workmen's Relief Commission) handed down an order requesting petitioner, the Treasurer of Puerto Rico, to levy an attachment upon the respondent's property to collect one of said awards (R. 4).

(8) That petitioner on October 27, 1936, summarily attached a truck belonging to respondent, and notified respondent that he would levy execution on the said truck and sell the same, if respondent did not pay the said award (R. 4).

(9) That there was no adequate remedy at law and petitioner's action would result in irreparable injury to respondent, unless an injunction was granted (R. 6).

Respondent prayed for an injunction restraining petitioner from attaching its property or endeavoring to collect the said compensations on the ground that the orders of the Workmen's Relief Commission were void, since it appeared from their very face and from the records of the Commission that respondent was an insured employer, and on the ground that, even admitting the validity of the said orders, petitioner could not legally attach respondent's property to collect the same (R. 4-6).

Petitioner demurred (R. 9) and his demurrer was dismissed (R. 11-12). The parties then submitted the case to the Court upon the following stipulation:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.
>
> "B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case:
>
> "1. Defendant maintains that the Supreme Court of Puerto Rico having decided against plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie.
>
> "2. Defendant further maintains that plaintiff not having taken recourse of the remedy provided

for by Section 9 of Act No. 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction does not now lie.

"3. Defendant further maintains that the orders of the Workmen's Relief Commission of April 24, 1928 described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution.

"4. Defendant further maintains that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act No. 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act No. 102 of 1925.

"C. Plaintiff maintains the negative of all the propositions as maintained by defendant, as above expounded.

"And in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of same in the general calendar" (R. 12-13).

On July 22, 1937, the District Court of San Juan entered judgment dismissing respondent's bill on the ground that injunction was not a proper remedy to enjoin the collection of the compensation awards as "that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law" (R. 19).

Respondent appealed to the Supreme Court of Puerto Rico (R. 25), and on February 11, 1938, the Supreme Court rendered its opinion (R. 26-34) and entered judgment (R. 34) affirming the judgment entered below on the grounds:

(1) that the stipulation on which the case was submitted to the District Court was "susceptible of the interpretation put to it by defendant" (the petitioner) (R. 30); (2) that the Treasurer could properly enforce the orders of the Workmen's Relief Commission by distraint under Act No. 45 of 1935 (R. 33); and (3) that respondent was not in a position to do by injunction after the years passed "what in due time it could have done by the means placed at its disposal by the law" (R. 32).

In reversing the decision of the Supreme Court of Puerto Rico (R. 26-34), which affirmed the dismissal (R. 19) of respondent's bill of injunction by the District Court, the Circuit Court of Appeals held:

> (1) That the finding of the Workmen's Relief Commission that respondent was uninsured was jurisdictional and subject to collateral attack (R. 68).
>
> (2) That there was jurisdiction in equity to enjoin the collection of the awards:
>
> > (a) because the remedy of appeal under § 9 of the Workmen's Accident Compensation Act had not been available to the respondent (R. 63) and
> >
> > (b) because whether or not respondent could have appealed it had no reason to do so, as the awards could only be collected by suit by the Attorney General in which suit all defenses could be raised (R. 64).
>
> (3) That, in any event, the awards could not be collected by distraint or summary attachment (R. 66-68).

Summary of Argument.

Under the stipulation upon which this case was submitted to the District Court, it cannot be disputed that respondent was an insured employer. Accordingly, inso-

far as they declared that respondent was an uninsured employer, the orders of the Workmen's Relief Commission were erroneous. The liability of the respondent as the employer to pay the compensation awards in controversy is a matter which the Workmen's Relief Commission was not called upon to decide. If respondent was an uninsured employer, the statute required that the Commission report the matter to the Attorney General for institution of proper action in a court of competent jurisdiction. This was the only action taken by the Workmen's Relief Commission (apart from making the awards), and there is no question of collateral attack upon a determination of that Commission.

The difference of opinion between the Circuit Court of Appeals and the Supreme Court of Puerto Rico as to the construction of Section 9 of the Workmen's Compensation Act as amended by Act No. 102 of 1925 (the Circuit Court of Appeals holding that that section gave the right of appeal to insured employers only) is not determinative of this case, for whether or not respondent could have appealed from the orders of the Workmen's Relief Commission, it had no reason to do so. The only manner in which the compensation awards could be collected from the respondent was by suit by the Attorney General in which suit respondent could raise the defense that it had been insured. Thus, the construction of Section 9 of the 1925 Act being immaterial, the decisions of this Court as to the respect to be paid to the decision of a territorial court of last resort interpreting a local territorial statute do not govern the instant case.

Even if respondent had not been insured petitioner could not legally collect the awards by summary attachment and there was jurisdiction in equity to enjoin the petitioner from so collecting them.

POINT I.

Respondent was an insured employer and the awards should have been paid out of the State Fund.

Under the stipulation of facts on which this case was submitted, it cannot be disputed that the respondent was an insured employer.

The first paragraph of the stipulation read as follows:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain" (R. 12).

As it is expressly alleged in the bill of injunction that the respondent was an insured employer (R. 2), that fact must be assumed, for it is undoubtedly one of the ultimate facts upon which the case was submitted. "Ultimate facts" include "all those facts necessary to be found in a given case in order that the determination of the right of the parties shall become a pure question of law." *United States* v. *Smith*, 39 F. (2d) 851, 854. See also *Mumm* v. *Jacob E. Decker & Sons*, 301 U. S. 168, 170.

Had respondent not been an insured employer that fact should and would have been raised by the filing of an answer to the bill. However, petitioner filed no answer, and in confessing "the ultimate facts of the bill" conceded that respondent was insured.

A comparison of Paragraph 3 of the bill of injunction (R. 2) with Section 13 of the Workmen's Accident Compensation Act of Puerto Rico, as amended by Act No. 61 of 1921, demonstrates that respondent took all the steps necessary to become an insured employer:

Respondent's Bill of Injunction.

"3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491), that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926" (R. 2).

Workmen's Accident Compensation Act, Section 13.

"It shall be the duty of every employer of workmen entitled to the benefits of this Act to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed;

• • • • •

The insurance of every employer shall become effective on the date on which his payroll of statement is filed in duplicate in the office of the commission; • • •" (Laws of Puerto Rico, 1921, p. 490).

Petitioner argues that the bill of injunction ignores the proviso contained in Section 13 of the Workmen's Compensation Act which states that, in addition to the statement which the employer is required to file annually, a supplemental statement must be filed if any workmen are employed

"for any term or part of a semester". Petitioner states that the deceased laborers "may well have been" within this category and that the respondent "may have failed" to file the supplemental sworn statement or "may have failed actually to pay the extra premium payment required" (See Petitioner's Brief, page 13). However, there is nothing whatever in the record to support any of these theories and no such contentions were made by the petitioner either in the District Court or in the Supreme Court of Puerto Rico. Moreover, it is alleged in Paragraph 1 of the bill that the respondent "actually employed during the dates to which this bill refers, besides its office personnel, various laborers, *all of which were insured under the laws in regard to workmen's compensation in force at the dates later referred herein*" (R. 1). The clear intendment of this allegation is that if respondent employed any laborers "for any term or part of a semester," the proviso in Section 13 of the Act was complied with.

Petitioner also argues that the respondent "may not actually have paid the premium assessments prior to February 12, 1926, the date of the accident." However, here again there is nothing whatever in the record to support petitioner's contention, and this theory also, was first broached by the petitioner in the Circuit Court of Appeals. Not only does the bill of injunction allege that all of the laborers employed by the respondent were insured, but it expressly alleges (R. 2) that the Treasurer of Puerto Rico assessed, taxed, and collected the required premiums from the respondent. Furthermore, in paragraph 5 of the bill it is alleged that respondent had "paid the premium corresponding to the year within which said accident occurred" (R. 3). No answer was filed denying this.

For these reasons the theories upon which petitioner bases his argument that the allegations of the bill are insuf-

ficient are totally without basis. Furthermore, the petitioner is in error in stating that respondent is bound in order to succeed to "negative all possible hypotheses upon which the order might be sustained."

It is a recognized rule of pleading that where a party relies upon a statute containing a general clause followed by an exception or proviso in a subsequent substantive clause, such exception is a matter of defense and need not be negatived.

McKelvey v. *United States*, 260 U. S. 353, 357;
Schlemmer v. *Buffalo, Rochester, etc. Ry.*, 205 U. S. 1, 10;
United States v. *King & Howe, Inc.*, 78 F. (2d) 693, 696.

This is based on the general principle that it is not necessary to anticipate and deny matters of defense.

See

Mumm v. *Jacob E. Decker & Sons*, 301 U. S. 168, 171-2.

Even if the petitioner were correct in his assumption that as a strict matter of pleading the bill of injunction did not set out the necessary facts to establish beyond doubt that respondent was insured, it is readily apparent from the second paragraph of the stipulation that any such defect in the bill of injunction was waived by the petitioner. Nevertheless, although no such point of pleading was made either in the District Court or in the Supreme Court of Puerto Rico, petitioner sought to invoke it in the Circuit Court of Appeals and again in this Court. The portion of the stipulation referred to reads as follows:

"*The facts alleged in the bill thus confessed*, the parties submit to the court the present case under the following *propositions of law, the determination*

of which they both understand decides this case: * * *" (R. 12).

(The stated propositions of law, quoted hereinabove at pages 4-5, are all based on the assumption that respondent was insured.)

As stated by petitioner, himself, in his brief in the Supreme Court of Puerto Rico: "The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively" (R. 30). This statement of petitioner was adopted with approval by the Supreme Court of Puerto Rico (R. 30). Nevertheless, petitioner has raised these questions of fact (and for the first time) in the Circuit Court of Appeals and in this Court.

POINT II.

Respondent is not attacking any determination of the Workmen's Relief Commission on a matter within its jurisdiction.

The jurisdiction of any administrative board or commission to hear and determine a claim, or to do any other act, must be based upon the express provisions of the statute setting up such board or commission and the existence of the necessary jurisdictional facts and statutory conditions must be established before the commission's orders or findings are given any effect. They can only decide those issues which they are expressly empowered by statute to decide. As stated by this Court in *Ex parte Reed*, 100 U. S. 13, cited by petitioner on page 27 of his brief:

"We do not overlook the point that there must be jurisdiction to give the judgment rendered, as well

> as to hear and determine the cause. If a magistrate having authority to fine for assault and battery should sentence the offender to be imprisoned in the penitentiary, or to suffer the punishment prescribed for homicide, his judgment would be as much a nullity as if the preliminary jurisdiction to hear and determine had not existed. Every act of a court beyond its jurisdiction is void." (100 U. S. 13, 23.)

The existence of these basic facts, upon which the statutory jurisdiction of the commission is based, is always subject to judicial review, whether by "collateral attack" or otherwise.

> *Ex parte Reed*, 100 U. S. 13, 23;
> *Givens* v. *Zerbst*, 255 U. S. 11, 19;
> *Ng Fung Ho* v. *White*, 259 U. S. 276, 284;
> *Crowell* v. *Benson*, 285 U. S. 22, 58;
> *Borax, Ltd.* v. *Los Angeles*, 296 U. S. 10, 18.

And see *Hawkins* v. *Bleakly*, 243 U. S. 210, 215, 216.

The Workmen's Accident Compensation Act of Puerto Rico (like the Washington statute upheld by this Court in *Mountain Timber Co.* v. *Washington*, 243 U. S. 219) provides a state fund out of which all compensation claims are to be paid, and the only situation under which the Workmen's Relief Commission or the Industrial Commission can direct that a compensation award be collected from the employer is where the employer is uninsured. The sole statutory provisions authorizing such an order at the time the awards here involved were made were Sections 7 and 20 of the Workmen's Accident Compensation Act, as amended by Act No. 102 of 1925, which read as follows:

> Section 7 (last paragraph): "In the case of an accident to a laborer while working for an employer *who in violation of the law is uninsured*, the Workmen's Relief Commission shall determine proper

compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum; * * *" (Laws of Puerto Rico, 1925-26, p. 926.)

Section 20. "If any accident occurs to any workman employed by an employer subject to the provisions of this Act, *who has failed to comply with said provisions relative to the submission of reports and the payment of premiums* on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workmen plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum." (Laws of Puerto Rico, 1925-26, pp. 942-44.)

Petitioner, by confessing the allegations of the fifth paragraph of respondent's bill of injunction (R. 2-3) admitted therefore that the orders of the Workmen's Relief Commission were without jurisdiction in so far as they purported to direct the collection of the awards from the respondent as an uninsured employer.

Petitioner contends that there was no possible lack of jurisdiction in the findings or orders of the Workmen's Relief Commission and that if there was any mistake therein, it was at the most simply a case of error in a matter which the Commission was called upon to decide. However, nowhere does he cite a statutory provision authorizing and empowering the Workmen's Relief Commission to decide the issue of whether or not an employer is insured, and the terms of Section 7 of the 1925 Act clearly indicate that this

is not one of the matters which the Commission is empowered to decide.

Not only does the act contain no express authorization to the Workmen's Relief Commission to pass upon the issue of whether or not an employer was insured, it contains an express limitation on this power, for it provides that in case of an accident to a laborer while working for an employer who, in violation of the law, is uninsured, "the Workmen's Relief Commission *shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction* * * *" (Act. No. 102, § 7; Laws of Puerto Rico, 1925, p. 926). In this language the legislature very plainly indicated its intention that the issue of the liability of an allegedly uninsured employer, such as the respondent here, was a matter to be determined by the courts in an action to be brought by the Attorney General, and it is the act of the petitioner in endeavoring to collect these awards by another procedure, a summary procedure not authorized by statute, which gives rise to this suit. This was a matter which the Commission was not called upon to decide, and which it did not decide, so that there is no question whatever of collateral attack upon a determination of an administrative body. In so far as respondent's liability as an allegedly uninsured employer was concerned, the sole power of the Workmen's Relief Commission under Sections 7 and 20 of the 1925 Act was to report the matter to the Attorney General so that he might bring the proper action in a court of competent jurisdiction and that was all the Commission did. They had no power to order the collection of awards from the respondent and they did not do so.

The vexatious questions involved in the problem of the judicial review of determinations of administrative bodies (such as the question of trial *de novo* of jurisdictional facts

involved in *Crowell* v. *Benson*, 285 U. S. 22) do not arise in the instant case since

(1) the statute required the Commission to leave the issue of the liability of the allegedly uninsured employer to the courts (Act No. 102, § 7, Laws of Puerto Rico, 1925, p. 926);

(2) the record does not indicate that the Commission made any formal determination of this issue (R. 2-3);

(3) the statute did not make findings of the Workmen's Relief Commission conclusive, if supported by evidence *

(4) there was no evidence whatsoever to support a finding that the respondent was not insured, and the records of the Commission admittedly established the contrary (R. 2).

POINT III.

The construction of Section 9 of the Puerto Rican Workmen's Compensation Act, as amended by Act No. 102 of 1925, is not determinative of this case, as respondent had no reason to appeal under that section even if it could have done so.

It has been the petitioner's contention that the respondent could have appealed from the orders of the Workmen's Relief Commission under Section 9 of the Workmen's Accident Compensation Act as amended by Act No. 102 of 1925

---

* Compare, in this respect, Clayton Act § 11, 15 U. S. C. A. § 21. Fed. Trade Comm. Act § 5(c), 15 U. S. C. A. § 45(c). Tariff Act of 1930, § 337(c), 19 U. S. C. A. § 1337(c).

(Laws of Puerto Rico, 1925-26, p. 930) and that having failed to take advantage of this alleged remedy, the respondent cannot come into equity to restrain the petitioner from enforcing these orders.

The petition for certiorari herein is based upon the alleged error of the Circuit Court of Appeals in adopting a different construction of Section 9 of the Puerto Rico Workmen's Compensation Act, as amended by Act No. 102 of 1925, from that adopted by the Supreme Court of Puerto Rico. The Puerto Rican court interpreted this section as allowing both insured employers and uninsured employers to appeal from decisions of the Workmen's Relief Commission, while the Circuit Court of Appeals held that Section 9 authorized appeals by insured employers only. Petitioner argues that the Circuit Court of Appeals should have adopted the construction of the Supreme Court of Puerto Rico, unless it was clearly erroneous, since the matter was one of local law to be determined by the Supreme Court of Puerto Rico. (Citing *Rafael Sancho Bonet, Treasurer of Puerto Rico* v. *Yabucoa Sugar Company*, 306 U. S. 505, and other cases.) Respondent is in entire agreement with petitioner on this point.

The construction of Section 9 of the 1925 Act as permitting only insured employers to appeal originated with the Circuit Court of Appeals itself. Respondent has never contended that Section 9 should be so construed. It is respondent's position that although both insured and uninsured employers could appeal under Section 9 of the 1925 Act (while that Act was in effect), the sole matter which could be adjudicated on such an appeal was the question whether the employee was entitled to compensation (a matter never disputed in this litigation), and not the issue of whether the compensation was to be paid out of the State Fund or collected from the employer. Respondent has never

attacked the awards themselves—only the manner in which they were to be collected.

In any event, the question of the construction of Section 9 is not determinative of the instant case, for, as the Circuit Court of Appeals stated (referring to Section 7 of the 1925 Act which required the Commission to report awards against uninsured employers to the Attorney General for collection by suit in the proper court):

> "In this way the Legislature provided a remedy by which the employer, the plaintiff here, could plead in defense of the action that he was not an uninsured employer and have the question whether he was or not determined by a court of competent jurisdiction.
>
> "We therefore conclude that the Supreme Court, if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. In any event, at the time the orders of April 24, 1928, were made, the plaintiff had an adequate remedy at law by way of defense under Section 7 of the Act, whether it had such a remedy by appeal under Section 9 or not. Whatever remedy by appeal it may have had was, after the lapse of thirty days, lost in reliance upon Section 7 and the action of the Relief Commission in sending the compensation orders to the Attorney General for collection by suit in the proper court. Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distraint, the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit. The bill should have been retained and the fact redetermined whether the plaintiff was or was not insured, for that is a jurisdictional fact open to redetermination in this proceeding" (R. 64).

The Workmen's Relief Commission was without power to direct the collection of the award from the employer and since these orders were void *ab initio* if they purported to do so, the respondent's remedy to set them aside (if it had one) was either by certiorari or by injunction, and not by appeal. The orders being to that extent without jurisdiction, respondent was not bound by them and had no reason to appeal.

Respondent did bring certiorari and the Supreme Court of Puerto Rico held that certiorari lay to review the acts of the courts only, and not the acts of administrative bodies, such as the Workmen's Relief Compensation (R. 30-32).

It is true that the Supreme Court of Puerto Rico in its opinion (R. 30-32) dismissing the writs of certiorai brought by the respondent suggested that "a general appeal, it would seem, could raise the incidental question", but it did not base its decision on this ground (R. 32). Furthermore, the only ground upon which "a general appeal" could be taken, in which to raise the "incidental question" referred to, was that the accident was not one for which compensation could be granted and respondent has never so contended.

In its opinion dismissing the writs of certiorari brought by the respondent, the Court went on to say (R. 32):

> "In any event if the board was without jurisdiction then the petitioner" (Respondent here) "ought to have had other means of protecting itself that we need not suggest."

Since it had already considered the remedies of certiorari and appeal, it can only be inferred that the Court had in mind that respondent could enjoin enforcement of the awards, for no other means have ever been suggested by which the respondent could protect itself.

In his opinion in the instant case, the District Judge held that respondent could not have taken an appeal under Section 9 of the 1925 Act (R. 16). The Supreme Court of Puerto Rico in considering this point merely quoted its prior opinion dismissing respondent's writs of certiorari and added that respondent was not in a position to do now by injunction what in due time it could have done "by the means placed at its disposal by the law" (R. 32) without stating what such "means" were.

In view of the obvious doubt of the Supreme Court of Puerto Rico as to the remedy available to the respondent, and of the holding of the District Judge and of the Circuit Court of Appeals that the remedy of appeal was not available, how can it be contended that the remedy at law was "plain, adequate and complete"?

If it is doubtful whether the remedy at law is adequate, equity will assume jurisdiction.

Union Pacific R.R. Co. v. *Weld County*, 247 U. S. 282;
Dawson v. *Kentucky Distilleries Co.*, 255 U. S. 288;
Atlantic Coast Line v. *Daughton*, 262 U. S. 413;
Wilson v. *Illinois Southern Ry.*, 263 U. S. 574;
American Life Insurance Co. v. *Stewart*, 300 U. S. 203.

When in 1928 the Workmen's Relief Commission handed down the illegal orders here in question, respondent had no reason to take any action other than to wait for the Attorney General to institute suit against it to recover the amount of the awards, for not only did the orders specifically provide that the awards were to be collected in that manner, but it was the only way in which they could lawfully be collected.

Although the Circuit Court of Appeals held (R. 64) that the employer could raise the defense that he was an insured employer in any action brought by the Attorney General to collect the awards, nevertheless petitioner suggests that the action authorized by Sections 7 and 20 of the 1925 Act was in the nature of an action to enforce a judgment and no such defense could be raised. The language of Sections 7 and 20 (quoted *supra* at pp. 13-14) shows this argument to be wholly fallacious and it is clear that even if the Workmen's Relief Commission had handed down a "judgment" directing the collection of the awards from the respondent (which it did not do and was not authorized to do) that "judgment" could only be "enforced" by proper action in a court of competent jurisdiction under Section 7, in which action all defenses could be raised. It is readily apparent that the commission was not a court and had none of the inherent powers of a court and could not hand down any "judgments".

The true nature of actions under Sections 7 and 20 of the 1925 Act appears from the interpretation of the similar section in the Workmen's Compensation Act of Ohio (General Code § 1465-74) considered by this Court in *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439, 440. The Court, speaking through Mr. Justice BRANDEIS, held that the action was a statutory cause of action for liquidated damages based on the Industrial Commission's award and that the employer could challenge the correctness of the award in all respects save the amount of compensation, citing *Fassig* v. *State*, 95 Oh. St. 232, 242, 116 N. E. 104. In the cited case the Ohio Supreme Court said:

> "The action to recover it is a statutory action, and under the amendment the statute properly fixes the measure of recovery. The action against the employer to recover the amount so ascertained and

> fixed must be brought in a court of general jurisdiction, and the defendant employer is entitled to a trial by jury. He is entitled to make the defense that he is not an employer of five or more employes, etc.; that the injury to the beneficiary was not received in the course of employment, or that it was willfully self-inflicted; *or he might show that he had paid his premium into the insurance fund.* The defense that he would not be entitled to make in the case simply goes to the amount of compensation, for that is fixed pursuant to the statute." (*Fassig* v. *State*. 95 Oh. St. 232, 242; 116 N. E. 104, 107.)

There being no plain, complete, and adequate remedy at law, there can be no question of the jurisdiction of the District Court to enjoin the petitioner from summarily attaching respondent's properties in order to collect these awards.

POINT IV.

Whether or not the compensation awards were collectible from the respondent, they could not legally be collected by summary attachment or distraint.

Even if it be assumed that respondent was uninsured at the time of the accident, and that the awards of the Workmen's Relief Commission could properly be collected from respondent as the employer, the action of the petitioner in seeking to attach summarily the properties of the respondent to collect the said awards was unauthorized by statute and wholly illegal.

The Puerto Rican Workmen's Accident Compensation Act in force at the time of the accident and at the time the awards were made specifically provided that should an accident befall a workman employed by an uninsured employer, the Workmen's Relief Commission should determine proper

compensation and report the same to the Attorney General for institution of proper action in a court of competent jurisdiction (Sections 7 and 20; Act No. 102 of 1925). It was by authority of these provisions that the Workmen's Relief Commission issued its orders of April 24, 1928 and the orders so indicated on their face (R. 3). No other procedure for the collection of the awards was authorized by the statutes then in effect.

Petitioner claims that Section 15 of Act No. 45 of 1935 authorizes him to distrain on the property of respondent. That section reads in part:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; * * * ." (Laws of Puerto Rico, 1935, p. 292).

That this section does not authorize petitioner to collect the awards by summary attachment or distraint is clear for the following reasons:

(1) *Section 15 of the 1935 Act does not grant the petitioner the right to distrain.*

Being a drastic remedy in derogation of private rights of property, the power to distrain and sell must be speci-

fically authorized by statute.

Caldwell v. *Eaton*, 5 Mass. 399;
Hull v. *Southern Development Co.*, 89 Md. 8, 42 Atl. 943;
3 *Cooley on Taxation*, 4th Ed., Sec. 1344.

Section 15 merely provides that compensation awarded to employees of uninsured employers shall constitute a preferred lien on all of the property of the employer. When the provisions of this section are compared with the provisions of Section 25 of the Workmen's Accident Compensation Act of 1928, which was repealed by the 1935 Act, it is apparent that while the petitioner did have the power to distrain and sell under the 1928 Act, that remedy was not made available to him under the 1935 Act. Section 25 of the 1928 Act provided that the compensation awarded to an injured laborer of an uninsured employer should "constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property." (Laws of Puerto Rico, 1928, p. 662.)

The remedy of distraint being available in Puerto Rico to collect a tax (Political Code § 315), the legislature clearly made this remedy available to collect compensation awards from uninsured employers under the 1928 Act when it provided that such awards should constitute liens "with the same legal effect" as taxes. Nowhere does the 1935 Act give such an effect to awards made thereunder, and it is clear that petitioner no longer has the required statutory authority to distrain on respondent's properties.

(2) *The compensation awards were not determined and certified for collection in accordance with the procedure required by Section 15 of the 1935 Act.*

As stated by the Circuit Court of Appeals in its opinion on this case (R. 66):

"The provisions of Section 15 are not applicable to awards of compensation by the Workmen's Relief Commission for an accident to a workman or employee in February, 1926, when the Act of 1925 was in force.

"The Manager of the State Fund, who, under the Act of 1935, is *to determine* the compensation and expenses in a given case arising under that law and certify its *determination* to the Treasurer of Puerto Rico for collection, is not the Workmen's Relief Commission that *determined* the compensation and expenses called in question in the orders of April 24, 1928. On the contrary the Manager of that Fund is a new administrative officer created under Act No. 45 of 1935, and his duties are limited to compensation cases arising under it. Clearly Section 15 of the Act of 1935 did not authorize the Manager of the State Fund, or the Industrial Commission created by that Act, to redetermine the awards made by the Workmen's Relief Commission under the Act of 1925 and certify them to the Treasurer for collection by distraint, and the allegations of the bill refute their ever having attempted to do so. All they did was to recall the old orders of April 24, 1928, from the Attorney General and order their collection by the Treasurer by distraint. Nor does it make the awards of compensation by the Workmen's Relief Commission under the Act of 1925 preferred over other liens burdening the property of the employer. *Domenech* v. *Lee*, 66 Fed. (2d) 31, 34, 35. And the enforcement of its provisions with relation to the orders of the Relief Commission of April 24, 1926 [*sic*], would also deprive the employer (the plaintiff here) of the right given him under Section 7 of the Act of 1925 to plead in defense to the action there authorized that he was an insured employer and contest the question judicially."

(3) *The 1935 Act is not in any way applicable to this proceeding.*

This is established by the saving clause contained in Section 34 thereof:

> "The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws." (Laws of Puerto Rico, 1935, p. 318.)

The Supreme Court of Puerto Rico was clearly wrong in holding that the litigations were "terminated" by the orders of April 24, 1928, and the Circuit Court of Appeals so held (R. 67). When the awards were reported to the Attorney General so that he might proceed to collect them from the respondent, the litigation of the claims rather than having been terminated was just about to start. (See the discussion *supra* at pp. 21-22.) Therefore, by the express provisions of § 34 of the 1935 Act, that Act cannot apply to this proceeding.

That the power to distrain and sell could be found only in Section 25 of Act No. 85 of 1928, and that the 1935 Act was by its own terms unavailable, has been conceded by petitioner, for it will be noted that his contention in the District Court of San Juan was that the proper, correct and legal procedure to collect the awards was that specified in Section 25 of Act No. 85 of 1928. (See the stipulation upon which the case was submitted. R. 12-13.)

Petitioner no longer relies upon the 1928 Act, as it is clear that that Act could at no time have applied to this proceeding. The accident occurred and the awards were

made prior to its enactment, and the order of the Industrial Commission of Puerto Rico which referred the awards to the petitioner was handed down on September 14, 1936 (R. 4), long after the 1928 Act had been repealed. (Act No. 45, Section 51, Laws of Puerto Rico, 1935, p. 330.)

It may also be pointed out that the 1928 Act contained a saving clause (Section 48) reading:

> "The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws." (Laws of Puerto Rico, 1928, p. 686.)

Clearly, the provisions of the 1928 Act have not the remotest relation to this litigation, yet in them alone is found the power to distrain and sell which the petitioner now asserts.

Thus, the only procedure available to the petitioner for the collection of the awards is that prescribed by Sections 7 and 20 of the 1925 Act (Laws of Puerto Rico, 1925, Act No. 102). A statute can be given a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively.

> *Fullerton Co.* v. *Northern Pacific*, 266 U. S. 435;
> *United States* v. *Magnolia Co.*, 276 U. S. 160;
> *Brewster* v. *Gage*, 280 U. S. 327.

In view of the saving clauses contained in both the 1928 and 1935 Acts, it cannot be held to be the intention of the legislature that either should be applicable to the collection of awards made under the Act in force in 1926.

Conclusion.

The judgment of the Circuit Court of Appeals reversing that of the Supreme Court of Puerto Rico should be affirmed and the case remanded to the District Court of San Juan

ordering that court to vacate its judgment and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928 by distraint upon the respondent's property.

Respectfully submitted,

HARRY T. KLEIN,
T. K. SCHMUCK,
LIONEL P. MARKS,
JERROLD H. RUSKIN,
Counsel for Respondent.

APPENDIX.

APPENDIX.

The following statutes are deemed necessary for the decision of this case:

Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61, approved July 14, 1921.

"*Section 13.*—It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in Sections 11 and 12 of this Act shall be computed; *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference. Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property of the employer just as soon as the same shall be left unpaid upon service of notice to pay. The insurance of every employer shall become effective on the date

on which his payroll or statement is filed in duplicate in the office of the commission; *Provided*, That this shall in no way affect the right of the injured laborer to the corresponding compensation.

"The failure to file such statement on or before the date above specified shall constitute a misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court. Blanks for such statements shall be furnished upon request by the Workmen's Relief Commission.

"It shall be the duty of every employer of laborers entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to everyone of the said laborers.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of Puerto Rico, 1921, pp. 490-492.*)

Appendix

Sections 2, 7, 9, 13, 20, 27, 28 and 30 of the Workmen's Accident Compensation Act, as amended by Act. No. 102, Approved September 1, 1925.

"*Section 2.*—That the provisions of this Act shall apply to laborers injured or disabled or who lose their lives from accidents occurring because of any act or function inherent in their work or employment and while engaged therein and as a consequence thereof, or from occupational diseases or death due to such occupation, as hereinafter specified; *Provided*, That the provisions of this Act shall be applicable to members of municipal fire corps, for which purpose each municipality shall include salaried firemen in its report on employees, made as an employer.

"Domestic servants and employees engaged in clerical work, in offices of any kind and commercial establishments where machinery is not used, are excepted.

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund.

"The sums so paid need not to be reimbursed to The People of Puerto Rico out of the fund created by this Act.

"The Commissioner of the Interior is hereby authorized to make advances on account of their com-

pensation, to workmen injured on public works, which advances shall be reimbursed to said official, if justified, out of the compensation fund, upon settlement of the compensation to workmen injured on public works." (*Laws of Puerto Rico, 1925, pp. 906-908.*)

"*Section 7.*—Every employer subject to the provisions of this Act, or the person representing him in business, shall report to the Workmen's Relief Commission as soon as possible, within a period of five days from the date of the accident, all injuries suffered by his employees in the course of their employment.

"Such reports shall be upon printed blanks furnished upon request by the commission, and shall contain the name and nature of the business of the employer, the location of the establishment or place of business, the name, age, sex and occupation of each injured employee, and shall state the date and hour of the accident, the nature and cause of the injuries sustained and such other information as the Workmen's Relief Commission may deem pertinent to request.

"The report made by the employer under the provisions of this section shall not be evidence against the employer in any proceeding under this or any other act.

"The refusal or neglect of any employer or his agent to make the report required by this section, shall constitute a misdemeanor and shall be punishable by a fine of not less than twenty-five (25) nor more than fifty (50) dollars for each offense.

"The Workmen's Relief Commission shall have power to direct the investigation of accidents by such investigators or agents as shall have been or shall hereafter be appointed by it for such purposes. The said investigators or agents shall make a thorough investigation of accidents and shall establish the cause or causes thereof, the character, nature and

extent of the injuries sustained, and shall file a full report of the said facts with the Commission, including in the said report such other facts and circumstances as in the opinion of the Commission may enable it to pass judgment on the claim for the relief of the injured workman when the said claim shall be presented to the commission as herein provided.

"The Workmen's Relief Commission shall have the power to make such further investigations as it may deem necessary for the purposes of this Act.

"The Workmen's Relief Commission or any of its members, and its investigators or agents, are hereby expressly authorized to sub-poena witnesses, under warning of punishment for contempt, to take oaths and declarations, to examine books and documentary evidence material to the case under investigation, and to visit and inspect the buildings, machinery and other property where any accident to a workman may have occurred.

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum; *Provided, however,* That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice." (*Laws of Puerto Rico, 1925, pp. 924-926.*)

"*Section 9.* Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the

accident is one for which compensation is granted under this Act.

"Said appeals shall be taken by filing in the office of the secretary of the district court, within thirty days after service of notice of the decision of the commission, a written statement of the ground for the claim and a statement of the facts on which the appeal is based. * * * " (*Laws of Puerto Rico, 1925, p. 930*).

"*Section 13.* It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed in sections 11 and 12 of this Act shall be computed: *Provided*, That every employer employing workmen covered by this Act for any term or part of a semester, shall file the aforesaid statement in duplicate and under oath, showing the number of workmen employed, the class of occupation and the estimated wages to be paid such workmen, and on such sum the premium payable by said employer shall be computed, and upon the termination of the work of said workmen the employer shall file a sworn statement similar to the one above stated, showing the total amount of wages paid, on which sum the corresponding liquidation shall be made, and should this payroll prove greater than the previous one, the Treasurer shall assess, levy and collect additional premiums on the difference.

"Collection of these premiums shall have preference over any other obligation of the employer and such premiums shall constitute a lien on the property

of the employer as soon as the same shall be left unpaid upon service of notice to pay.

"If the employer fails to file such statement on or before the date above-specified, the commission shall grant him twenty days more in which to do so; *Provided*, That if upon the expiration of said period the employer fails to file said statement, he shall be guilty of misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars; in the discretion of the court.

"The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission, accompanied by the amount of the assessment corresponding to the percentage of wages declared in said statement in accordance with the rates fixed by the Commission; *Provided*, That this shall in no way affect the right of the laborer to the corresponding compensation.

"It shall be the duty of every employer entitled to the benefits of this Act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by, and the wages paid to, every one of the said laborers; *Provided*, That if any employer fails to comply with this requisite, he shall be guilty of misdemeanor punishable by a fine not to exceed fifty (50) dollars.

"The Workmen's Relief Commission may order an inspection to be made of all the payrolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

"Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to

file the statement required by this section and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this Act." (*Laws of Puerto Rico, 1925, pp. 938-942.*)

"*Section 20.*—If any accident occurs to any workman employed by an employer subject to the provisions of this Act, who has failed to comply with said provisions relative to the submission of reports and the payment of premiums on the dates hereinbefore specified, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation to be paid injured workman plus expenses in the case. The commission shall report to the Attorney General the total amount of said compensation, plus the expenses in the case, in order that he, by proper action in a court of competent jurisdiction, may obtain payment of said sum." * * * (*Laws of Puerto Rico, 1925, pp. 942-944*).

"*Section 27.*—That the amounts existing in the Workmen's Relief Trust Fund created by section 1 of an act entitled 'An Act providing for the relief of such workmen as may be injured, or of the dependent families of those who may lose their lives while engaged in trades or occupations and for other purposes', approved April 13, 1916, are hereby reappropriated to carry out the provisions of this Act and shall constitute the Workmen's Relief Trust Fund hereby created together with such other sums as are hereinafter specified." (*Laws of Puerto Rico, 1925, p. 944.*)

"*Section 28.*—That all employers employing workmen subject to the terms of this Act, shall be bound to

contribute to the 'Workmen's Relief Trust Fund' in the form and manner provided herein; *Provided*, That any employer may file with any district court an application for a writ of *certiorari* in order that said court may review any decision of the commission on the levying of assessments, provided said application is made within thirty (30) days after the date of the service of notice of the levying of such assessment; *And provided, further*, That the legality of any premium fixed by the commission may be reviewed by means of *certiorari* proceedings in same manner and form hereinbefore specified, provided the application is made within the same term of thirty (30) days above established." (*Laws of Puerto Rico, 1925, pp. 944-946.*)

"*Section 30.*—For the purposes of this Act 'laborer' or 'employee' shall be understood to be any person at the service of any individual, partnership or corporation regularly employing one or more persons under any express or implied service contract, whether verbal or written, and whether such person is man, woman or child; *Provided*, That such laborers or employees working for employers not included in the insurance established in this Act, and those whose labor is of a merely accidental character are expressly excluded.

"The word 'laborer' or 'employee' includes all workmen employed in any manufacturing or agricultural establishment or occupation by any natural or artificial person, for compensation; and by the Insular Government or any of its dependencies, according to the purposes of this Act." (*Laws of Puerto Rico, 1925, p. 946.*)

Sections 25, 48 and 57 of Act. No. 85, approved May 14, 1928.

"*Section 25.*—In case of an accident to a laborer while working for an employer who in violation of

the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; * * *" (*Laws of Puerto Rico, 1928, p. 662*).

"*Section 48.*—The provisions of this act shall in no way affect pending litigation relative to workmen's compensation under previous laws." (*Laws of Puerto Rico, 1928, p. 686.*)

"*Section 57.*—All laws or parts of laws in conflict herewith are hereby repealed." (*Laws of Puerto Rico, 1928, p. 696.*)

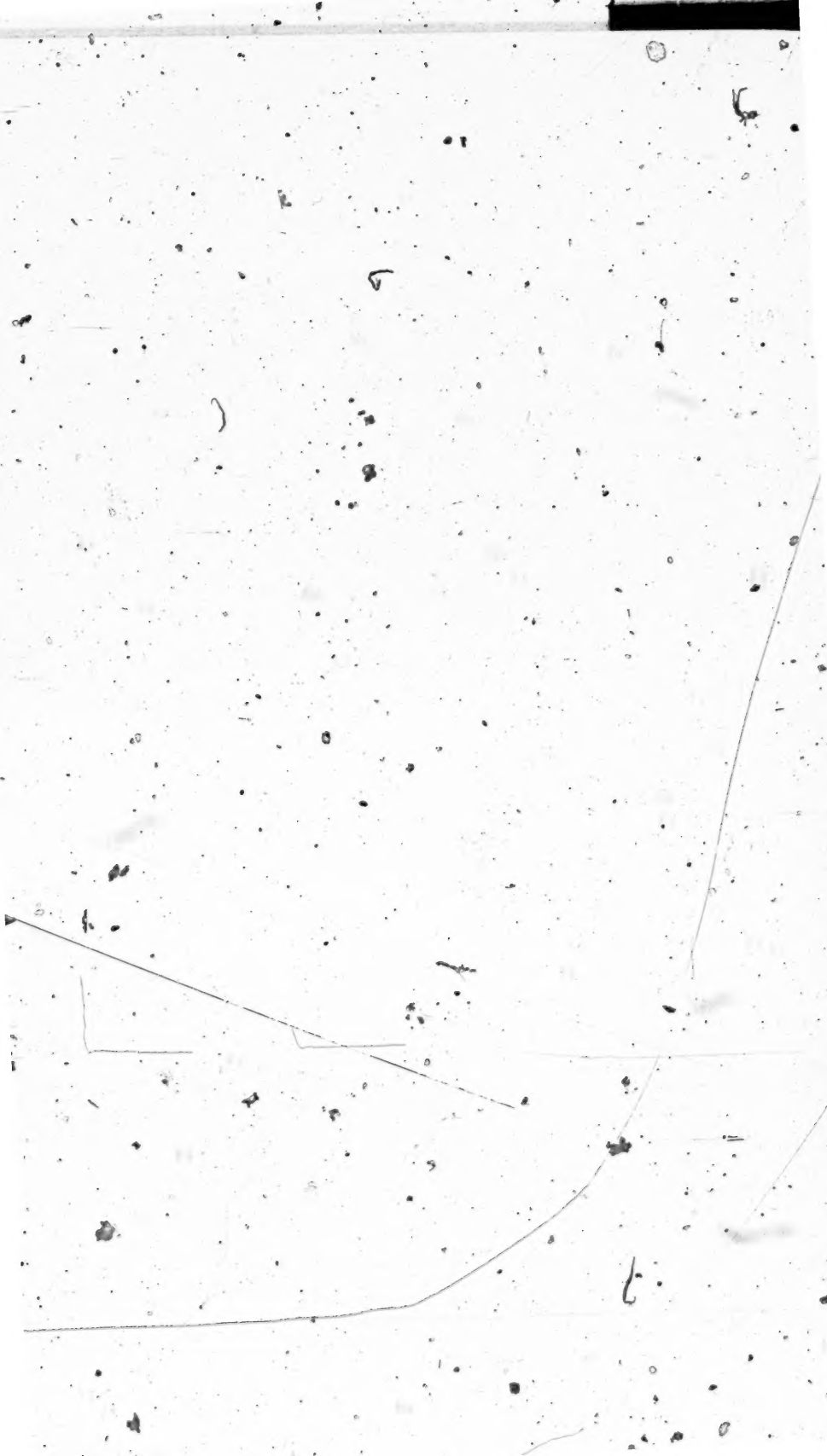
Sections 15, 34 and 51, Act No. 45, approved April 18, 1935.

"*Section 15.*—In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when

it is attached to secure the said compensation and expenses; *Provided, further,* That the Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and to defend themselves, conforming as far as possible to the practice observed in the district courts; *And provided, also,* That after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay. * * *" (*Laws of Puerto Rico, 1935, p. 292.*)

"*Section 34.*—The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws." (*Laws of Puerto Rico, 1935, p. 318.*)

"*Section 51.*—Act No. 85, approved May 14, 1928, as subsequently amended, is hereby expressly repealed, with the exception of the provisions in Sections 40 to 47, both inclusive, of this Act, in regard to the decision and liquidation of cases pending under said Act." (*Laws of Puerto Rico, 1935, p. 330.*)



SUPREME COURT OF THE UNITED STATES.

No. 132.—October Term, 1939.

Rafael Sancho Bonet, Treasurer, Petitioner, *vs.* The Texas Company (P. R.), Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 2, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondent brought this action in a Puerto Rico court to enjoin the Treasurer of Puerto Rico from enforcing by distraint, orders of the Puerto Rico Workmen's Relief Commission awarding compensation for the death of each of three laborers while in the employ of respondent. The Supreme Court of Puerto Rico interpreted the Workmen's Accident Compensation Act of Puerto Rico[1] as not permitting such collateral attack on orders of the Commission and affirmed a judgment dismissing the bill. 52 D. P. R. 658, 53 D. P. R. 475. On appeal (43 Stat. 936) the Circuit Court of Appeals vacated that judgment and remanded the cause with directions to issue the injunction. 102 F. (2d) 710. We granted certiorari because of the asserted violation by the Circuit Court of Appeals of the well established rule that Puerto Rican tribunals must not be overruled on their construction of local statutes in absence of "clear or manifest error." *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 307 U. S. 613.

The theory underlying respondent's bill was that it was an insured employer and therefore the awards should have been paid out of the state fund,[2] and that its remedy at law was not adequate. The bill so alleged, and attacked the orders of the Commission adjudging that it was not an insured employer. The cause was submitted, without an answer, on a stipulation which included, *inter alia*, an admission by petitioner of "the ultimate facts of the bill, except the conclusions of fact or of law that it might contain." The Supreme Court of Puerto Rico in effect treated this stipulation

[1] Act No. 102, 1925, as amended by Act No. 85, 1928 and Act No. 45, 1935.

[2] As to the creation of that fund, see §§ 11, 27 of Act No. 102, 1925.

as a demurrer and concluded that petitioner had not thereby admitted that respondent was an insured employer. This seems to have been a reasonable construction—certainly not manifest error.

Treating the bill then as one brought by an uninsured employer, the Supreme Court of Puerto Rico construed the Act on two points: (1) the right of respondent to appeal; (2) the power of petitioner to distrain.

Right to Appeal. It held that respondent had an adequate remedy at law under § 9 of the Act which provided that "the employer may appeal from any decision of the Commission when such decision is to the effect that the accident is one for which compensation is granted under this Act."[3] And it indicated that on such appeal the question of whether or not respondent was uninsured was among the issues which could have been reviewed.[4] The Commission, however, had directed the awards to the Attorney General on April 24, 1928, for collection under § 7 of the Act, a section providing for collection of awards against uninsured employers.[5] But eight years passed and the Attorney General made no attempt to collect. Respondent contended that it did not appeal under § 9 since it was waiting to defend, on the ground that it was insured, an action by the Attorney General under § 7. And though a new method of collection of such awards was created within a few months after these awards were made,[6] respondent contended that

---

[3] Act No. 102, 1925, § 9. Thirty days were allowed for perfecting the appeal. *Id.* A comparable provision for review is found in Act No. 85, 1928, § 15, where ten days were allowed; and in Act No. 45, 1935, § 11, where fifteen days are granted.

[4] This point seems to have been first decided by the Supreme Court of Puerto Rico on a writ of certiorari brought by respondent to nullify the orders of the Commission here involved. The court held that the writ did not lie since it applied only to review the actions of courts. 40 P. R. R. 456.

[5] Sec. 7 of Act No. 102, 1925, provided in part:

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum: *Provided, however*, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice."

[6] Act No. 85, 1928, became effective ninety days after its approval on May 14, 1928. § 58. This Act by § 7 created an Industrial Commission to administer the Act. And by § 25 collection of claims against uninsured employers was provided as follows:

"In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine

the new law, in providing that pending litigation was not to be affected,[7] preserved its former opportunity to defend under § 7. To this the Supreme Court of Puerto Rico replied that the purpose of the saving clause in the new act[8] was merely to preserve the rights of workmen to compensation, not to make the new procedure inapplicable to pending cases in contradiction to the well settled rule that procedural statutes are immediately applicable. It also added that in any event the procedure of § 7 had not survived the issuance of the order by the Commission since by the 1935 amendment that procedure was to be "followed in such litigations or claims, until their termination"[9]—the issuance of the orders of the Commission having terminated the case within the meaning of the amendment.

The Circuit Court of Appeals disagreed with this construction of the Act. It held that § 9 gave an appeal only to insured employers and that only § 7 provided for review of orders issued against those who were uninsured. It said that when § 9 stated that "the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act"; it meant that only insured employers could appeal since the compensation granted by the

---

proper compensation, plus expenses incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property; *Provided, however,* That the Commissioner shall grant both the employer and the laborer in the case an opportunity to be heard and to defend themselves, and he shall conform, as far as possible, to the practices observed by the district courts."

This procedure, according to the Supreme Court of Puerto Rico, took the place of that provided by § 7 of the 1925 Act, *supra*, note 5, by reason of § 57, "all laws or parts of laws in conflict herewith are hereby repealed."

On September 14, 1936, the Industrial Commission issued an order requesting the petitioner to levy an attachment on properties of respondent.

[7] Act No. 85, 1928, § 48, provided: "The provisions of this Act shall in no way affect pending litigation relative to workmen's compensation under previous laws."

[8] Act No. 45, 1935, § 34, also provided:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure allowed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

[9] *Supra*, note 8.

Act was payment out of the state fund.[10] Hence, in its view, the orders of the Commission here in question were "to the effect" that the accident was not one for which compensation was granted under the Act, since the Commission had adjudged respondent to be uninsured. Consistently with that construction it held that the remedy of an aggrieved uninsured employer was to defend any suit brought under § 7. For in its view, the procedure under § 7 was not abolished by the amendments, the issuance of the orders of the Commission not having terminated the case within the meaning of the saving clause quoted above. Accordingly, it held that unless petitioner were restrained from collecting the awards, respondent would be deprived of its day in court.

Power of Petitioner to Distrain. The Supreme Court of Puerto Rico concluded that petitioner had the power to distrain by virtue of the amendments to the Act made subsequent to the issuance of the orders of award. By the 1928 amendments[11] summary procedure was authorized for collection of a claim "as if it were a tax levied on such property". § 25. Although that phrase was eliminated by the 1935 amendments, § 15 of the latter made such claims "liens preferred over any other charge or lien for taxes or any other cause" with specified exceptions.[12] The court held that since under both the 1928 and 1935 amendments petitioner had the

---

[10] The Circuit Court of Appeals referred to § 2 of the 1925 Act which provided in part:

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, That pursuant to the provisions of this Act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the government trust fund."

[11] *Supra*, note 6.

[12] Sec. 15 of Act No. 45, 1935, provided in part:

"In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses;" . . .

duty to collect the claims and since under both the claim had the status or legal effect of a tax, the power to distrain survived.

But the Circuit Court of Appeals disagreed with that conclusion. It reasoned that petitioner had no power to collect in that manner since by § 15 of the 1935 amendments the person who was to "determine" the amount of the claim and "certify its decision"[13] to petitioner was the Manager of the State Fund created under that law.[14] That person not being the same as the Workmen's Relief Commission which had issued the orders in question, § 15 was not operative as respects respondent. This reasoning was interwoven with the conclusion of that court that the new procedure provided by the 1928 and 1935 amendments[15] did not reach back to touch pending cases, a result contrary to the opinion of the Supreme Court of Puerto Rico, as we have noted.

The Supreme Court of Puerto Rico, on the other hand, did not reach the precise point determinative of the power of the Manager of the State Fund to certify an award of the former Workmen's Relief Commission apparently because it was tacitly admitted that that power existed,[16] if the remedy provided by former § 7 had been abolished. But however that may be, it did conclude that the Act as amended, though not clear, was designed to give the petitioner power to distrain and that the procedure followed was authorized by law.

For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co.*, *supra*, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy.[17] As this court recently

---

[13] *Supra*, note 12.

[14] Act No. 45, 1935, § 6.

[15] *Supra*, notes 6, 12.

[16] In its motion for reconsideration respondent stated:

"As taxes can be collected by distraint, it is clear that under the law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only states that the Treasurer shall collect them. That being the case, it shall be taken that he can only collect them by an ordinary action."

[17] In Diaz v. Gonzalez, 261 U. S. 102, 105-106, another Puerto Rico case, Mr. Justice Holmes observed:

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite

stated, "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island." *Bonet v. Yabucoa Sugar Co., supra,* p. 510.

We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

Measured by such a test the judgment of the Supreme Court of Puerto should not have been reversed. In concluding that under § 9 an uninsured employer could have an award of the Commission reviewed, including the issue of whether or not he was insured, the Supreme Court of Puerto Rico did not take a patently absurd position. The most that can be said is that the contrary position is a tenable one. In holding that the amendments substituted collection by the petitioner for collection by the Attorney General even in case of pending claims, that tribunal did not commit manifest error. The conclusion that the latter procedure survived the amendments is merely another possible view. And the decision of that tribunal that the petitioner had the power to distrain[18] cannot be

---

De Villanueva *v.* Villanueva, 239 U. S. 293, 299. Nadal *v.* May, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books."

[18] The Supreme Court of Puerto Rico also held that § 243 of the Code of Civil Procedure, barring execution of a judgment for the payment of money after five years from the date of its entry, does not apply to orders of the Commission covering compensation awards, a construction which does not seem to be manifest error.

id to be inescapably wrong in view of the legislative design to ave no hiatus in the statutory scheme as a result of cumulative nendments. The contrary conclusion, though it might seem holly reasonable, would not warrant a reversal.

Intimations that respondent was not accorded due process of law nd that the question of whether or not it was insured was a juris-ictional fact open to collateral attack are untenable. According the Supreme Court of Puerto Rico, respondent had not only an pportunity to be heard before the Commission but also a right of ppeal. The fact that the period for review by appeal was very mited and that on respondent's interpretation of the law its right appeal was uncertain are immaterial. Here, as on other aspects f this case, we cannot say that the conclusion of the Supreme Court f Puerto Rico that under this statute the remedy of respondent at w was adequate is obviously erroneous.

The judgment of the Circuit Court of Appeals is reversed and the dgment of the Supreme Court of Puerto Rico is affirmed.

It is so ordered.

Mr. Justice STONE did not participate in the consideration or dis-osition of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.